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AN ALIEN OF A BELLIGERENT COUNTRY SUING AN ALIEN OF AN OPPOSING BELLIGERENT COUNTRY IN THE COURTS OF A NEUTRAL.

Two cases lately have appeared in this country in which a corporation of one of the belligerent nations of Europe sued a corporation of an opposing belligerent nation, in the one case an English corporation sued an Austrian corporation, in the other case, a French corporation sued a German corporation. In the latter case it was held that the action would not be entertained, and in the former case it was held it would be an unneutral act not to entertain the action. Watts, Watts & Co. v. Unione Austriola di Navigazione, 224 Fed. 188; Compagnie U. de Telegraphie v. United States Service Corp. (N. J. Eq.), 95 Atl. 187.

These two cases, though directly variant in conclusion, are not necessarily opposed in principle, though the latter in criticising somewhat the opinion in the former dissents from some of the views expressed by the court.

The former case concerned the enforcement of obligations which arose and were to be performed in belligerent England. The latter case was in regard to the enforcement of a contract entered into in France and to be performed in this country by the transfer of land in this country and the doing of other things specified in the contract. In both of these cases the contracts were entered into before the breaking out of the war, and the defendants claimed that they were forbidden by express enactments of their countries, respectively, to carry out their contracts, or to do anything by way of aiding the citizens of the opposing countries, because they were alien enemies.

In both of these cases there is also much reference to "the common law to the belligerents," and of that having its effect in a neutral forum, and such being the case, the court in the former case says: "It is quite beside the point to rely, as the libellant does, upon the fact that the libellant could enforce this payment in England (its home), if it could find the respondent or any of its property there. That recourse would be available to it under such circumstances as a particular application of the general rule looking to the impairment of the resources of the alien enemy. But it is because the libellant finds it impossible to reach the respondent or its property in England that it has applied to this forum. From the standpoint of this neutral jurisdiction the controlling consideration is that the law of both belligerent countries forbids a payment by one belligerent subject to the enemy during the continuance of war. This court, in the exercise of jurisdiction founded on comity, may not ignore that state of war and disregard the consequences from it."

The other case says: "In times of peace, the courts take jurisdiction, as a matter of course, for the benefit of denizens and aliens alike. If foreign nations are at war among themselves, this nation does not cease to be friendly. Its courts remain open to their subjects. Certainly a French citizen may still sue an American citizen. Why should he not sue a German subject? No law of France prohibits it. On the contrary, he may sue even in France, if to his advantage, and not to the advantage of the enemy. Why may he not sue in this court? If he may not, it can only be on the ground that this court will give some effect to German legislation enacted as a war measure—as a means of crippling its enemy. * * * If this court gave effect to it, it would, in a measure, be enforcing German law, which, on well-settled principles, can have no extraterritorial operation, to the detriment of the French citi-

zen asking to be heard. This, it seems to me, would be an unneutral act."

It is perceived here, that our courts refraining from the exercise of jurisdiction, is looked upon as an act, both neutral and unneutral. It seems to us that, boldly stated as the matter is in both of the excerpts we make, the federal court has the better of the argument. The New Jersey court would have better placed its conclusion to entertain jurisdiction on the ground that the right of action acquired by the French corporation related to a "right to New Jersey land," a right that lay wholly outside of control by German law and it was of no concern to this country what the effect of such enforcement might be. Pivoting jurisdiction on this one fact, all of the consequences of its exercise would be swallowed up in its exercise. Indeed, in the face of such a fact in the New Jersey case, there was no question of rights of alien subjects, belligerent or non-belligerent, involved. In the federal case there was such a question, because the contract itself was foreign, and to it the restrictions of foreign law prevailed and its binding force during war applied.

NOTES OF IMPORTANT DECISIONS.

COMMERCE—DELIVERY BY MANUFACTURER TO WHOLESALER ENGAGED IN INTERSTATE COMMERCE OF IMPURE FOOD AND DRUGS.—Seventh Circuit Court of Appeals holds that a manufacturer who delivers adulterated food to a wholesaler with knowledge that the latter is engaged in interstate commerce, is within the Food and Drugs Act and punishable for such delivery as being in interstate commerce. Glaser Kohn & Co. v. United States, 224 Fed. 84.

The court recites the section exonerating dealers in interstate commerce who ship under a guaranty of wholesalers, jobbers and manufacturers that the goods they supply to him are not misbranded or adulterated and that the parties who supply him under such guaranty shall be amenable in his stead to prosecutions, fines, etc.

It is said that: "As between a dealer, to whom the purity of the goods is guaranteed and the manufacturer, who has the better opportunity of ascertaining the facts, the act aims to throw the ultimate responsibility on the latter." Therefore, the court held that a general guaranty by a manufacturer as to all goods it had or would furnish wholesaler, known by it to be in interstate commerce, sufficed to make it responsible criminally for such of said goods as were adulterated and shipped by the wholesaler in interstate commerce. It is familiar that no agency to commit a crime is of any validity, but here a mere general guaranty suffices to make the general guarantor liable, where a delivery within a state is the beginning and end of his act and contract. May Congress denounce an act wholly valid in state law as a crime? Or, may it take the place of state law making the act a crime? If it may not do this, it does not matter how commendable may be the purpose aimed at. Could one prosecuted under state law similar to the Food and Drug Act of Congress, plead that he delivered the goods in interstate commerce, because the dealer to whom he sold them intended to ship them in interstate commerce? We greatly doubt whether such a plea would be held tenable.

INSURANCE—RIGHT TO CHANGE BENEFICIARY NOT RIGHT TO SURRENDER POLICY.—The Georgia Supreme Court holds that the reserved right of an insured to change the beneficiary in ordinary life insurance and the right in addition, after three years, to assign a policy upon an advancement or after then to surrender the policy for a paid up policy, or accept its value in cash, do not carry the right to surrender the policy prior to said expiration of three years. Roberts v. N. W. Nat. L. Ins. Co., 85 S. E. 1042.

It is announced, as well established generally, that: "In ordinary life insurance, where no power of divestiture or to change the beneficiary is reserved in the policy, the issuance of the policy confers a vested right upon the person so named as beneficiary."

But why extend this principle to the inclusion of a vested right in a named beneficiary, who may be displaced by the mere will of the insured, without the consent of such named beneficiary?

In this case there was attempted surrender before the policy had run three years, and, therefore, what was said about assignment and surrender of a policy after that time was in

mere general construction of its terms. The effect of the holding was to deny to an insured the right to deal with his policy, because of a vested interest in the benficiary, which, nevertheless, was subject to revocation, at the mere will of the insured. That vesting would appear to be of such a fugitive character as to be greatly negligible.

This ruling is applied to a policy in ordinary insurance, and we greatly doubt, even if it be sound, that it ought to cover insurance in fraternal or benefit societies, as to which it has been held, in a general way, that the beneficiary has no vested interest whatever. This doctrine in fraternal insurance has been very vigorously applied and comprehensive language has been used in declaring that the beneficiary has no standing whatever.

NEGLIGENCE—EXPERT EVIDENCE IN DETERMINING PROXIMATE CAUSE.—In St. Louis I. M. & S. R. Co. v. Steel, 178 S. W. 320, decided by Arkansas Supreme Court, the facts show that deceased was injured in October, 1912, his back being bruised from a car running against him. He went to his home complaining of his back hurting him. He afterwards walked with a stick, ceased doing any work and his health continued to decline. In June, of 1914, he contracted typhoid fever and died from that. as the immediate cause, in August thereafter.

The doctors all testified that typhoid fever is caused by a germ and does not result from trauma, one doctor testifying, however, that lowered vitality and weakened condition resulting from injury may have caused deceased more easily to have become infected with the typhoid germ and made his chances of recovery more doubtful.

The Supreme Court thought that under the evidence the typhoid fever was "an intermediate cause disconnected from the primary, or original injury."

In this the court distinguishes between a possible cause and one fairly shown to arise out of the injury. This is to say the jury had no right to guess at the proximate cause, but as a question for the jury, proximate cause must be shown probably to arise out of a "particular situation in view of the facts and circumstances surrounding it." This is a rule somewhat difficult, at least, always, to apply, but here there seemed no room for a jury's conclusion, that the typhoid fever was a result of the injury.

REPORT OF THE MEETING OF THE SECTION OF LEGAL EDUCATION OF THE AMERICAN BAR ASSOCIATION.

The Section of Legal Education of the American Bar Association held three sessions at the Salt Lake City meeting on Monday and Tuesday, August 16 and 17, and on Thursday, August 19. Although the place of meeting was almost a mile from the headquarters of the American Bar Association in Salt Lake City, each session was well attended and marked with a decided interest in the subjects presented for discussion.

The session on Monday was in the nature of a conference of State Bar Examiners, Supreme Court Judges, and law school teachers. The subject for discussion was, "The Best Practical Method of Ascertaining the Moral Character of Candidates for Admission to the Bar." An able paper on this, by Judge David Leventritt, of New York City, was followed by a discussion in which many took part, including Judge Andrew A. Bruce, of the Supreme Court of North Dakota, Hollis R. Bailey, of Boston; Walter George Smith, of Philadelphia; Henry H. Wilson, of Lincoln, Nebraska; C. P. Arnold, of Laramie, Wyoming; William Draper Lewis, of Philadelphia; Nathan W. MacChesney, of Chicago; Judge Charles S. Lobingier, of the United States Court, Shanghai, China; George D. Ayers, of Moscow, Idaho; John B. Sanborn, of Madison, Wisconsin; Victor H. Kulp, of Norman, Oklahoma; H. A. Bronson, of Grand Forks, North Dakota; A. E. L. Leckie, of Washington, D. C.; Charles L. Griffin, of New York City.

One result of the paper and the discussion was the following resolution, proposed by Mr. Hollis R. Bailey, and adopted by the Section:

Resolved, That it is desirable that a personal examination of each applicant for admission to the Bar should be had as to his moral character, such examination to be in

addition to the examination as to his educational qualifications, and also in addition to the requirements of certificates as to his moral character.

The annual address by the chairman of the Section, Mr. Charles S. Shepard, of Seattle, Washington, was delivered on Tuesday afternoon. This session was notable from the fact that the chairman's address, the paper by Mr. Lawrence Maxwell, of Ohio, a leader of the American Bar, the paper by Professor John H. Wigmore, of Chicago, a leader in legal education in America, and the address by Andrew A. Bruce, of the Supreme Court of North Dakota, a recognized leader in the American Judiciary, all concurred in urging the importance, to the lawyer individually and to the state, of a broad pre-legal education as a preparation, not merely for work in the law school, but chiefly for the practice of the law. It was the strongest presentation of this view that has been made in the American Bar Association. In the discussion following Judge Bruce's address, remarks were made by Governor Baldwin, of Connecticut; Judge Roderick Rombauer, of St. Louis; John W. Kemp, of Los Angeles; William A. Hayes, of Milwaukee, Wisconsin; Charles S. Potts, of Austin, Texas; John A. Chambliss, of Chattanooga, Tennessee; Judge John C. Townes, of Texas, and others.

The chief feature of the Thursday session was the report of the committee on Standards for Admission. This report, the result of several years of hard work by a committee of eminent lawyers, appointed for the purpose, took the form of eighteen distinct propositions. A number of these were approved by the Section. On some the Section hesitated. After considerable discussion, all the propositions which the Section did not approve were referred to a conference to be held next year at the opening of the annual session of the American Bar Association. These propositions, as well as those which were adopted by the Section, will appear later in these columns. Both raise some very important questions of interest to the profession.

The officers for the Section for the ensuing year are: Judge Henry Stockbridge, of the Maryland Court of Appeals, Baltimore, Maryland, and Charles M. Hepburn, of the law faculty of Indiana University, Bloomington, Indiana.

CHAS. M. HEPBURN.

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THE EDUCATION OF THE LAWYER IN RELATION TO PUBLIC SERVICE.*

The Section is now nearing its quarter century mark and apprehension is sometimes expressed that in no long time there will cease to be unsettled topics for it to discuss. But education is a subject of perennial interest and multitudinous and mutable aspects. It can be viewed from many angles, and it bears on all the diverse phases and functions of life. An age such as the past half-century, replete with striking changes in science, philosophy, politics and the practical arts inevitably presents many new problems, propounds many searching questions, as to the bearing of these changes on the content and processes of instruction to the oncoming youth. No wonder, then, that for many years the else placid pools of the universities have been troubled with floods of words on what, why and how to teach. Debate, sometimes fruitful, sometimes barren and acrimonious, always ardent, persists on one or another branch of the topic.

Education certainly must be adapted to both the old and the new elements in the life of each age, or it will not achieve its aim. And this suggests the query whether the training of the young lawyer to-day

*As chairman of the Section of Legal Education, Mr. Charles E. Shepard delivered this address at the meeting of the American Bar Association at Salt Lake City, August 17, 1915.

fully meets his needs on the side of public and political affairs. What should be the education of the lawyer in relation to public service?

Over two centuries ago, it was laid down as the foundation of a small "collegiate school" which has since then become a great university that it was to train its sons "for service in church and state." The same general aims remain, but the ways to reach them are far different. Life has become vastly more complicated, the increase of knowledge and its materials so enormous that much selection and specialization are imperative. The simple and uniform education of former times no longer suffices worthily to equip one for either professional or public life. It is certain that a considerable portion of the members of the bar will in their day and generation fill public offices, some of them high and important offices, that many others will take part in public discussion and political action, and that all should be fitted to do that intelligently and creditably. In democratic America, to be a lawyer inevitably breeds interest in public affairs; and participation follows interest. It is a familiar fact that a very large part of the higher officers in both state and national governments are lawyers. A majority of the presidents, very many cabinet members, diplomats, governors and administrative officers of the states, and thousands of legislators, state and federal, have been trained for the bar. Perhaps the most striking instance that the law is neither silent nor absent in the person of its followers, even amid the arms of the War and Naval Departments, was shown by the recent president of our Association when he was Secretary of War. We cannot pause to recount in detail the many other ways, less conspicuous and direct, yet effective, in which the men of law have participated in the shaping of public opinion, the control and conduct of public action and in service on many public boards and commissions not of professional character. When our country is served to such a degree by its lawyers, it is well to ask ourselves: What shall we teach these law students to make them fit for public office and apt for public affairs, so that the republic shall take no harm? Can we teach them anything to that end? If so, what shall it be?

Before we attempt an answer to these questions, let us consider briefly another reason than the historical one why the American youth designed for the bar should have an education in some degree preparatory for public life, and beyond strict professional limits. The most insistent cry in the whole world to-day is for justice—justice individual, social, political, international. Civil and political and international order begets justice; perfect order under perfect law is itself justice. Very much—though by no means all—that is wrong in our country to-day is within reach of cure or improvement by changes in the law—a simpler procedure, a surer and swifter criminal law, a civil law better adapted to modern life, to the social rights and needs of the multitude, to the organization of commerce and industry as they are now, instead of as they were in a past age, under other methods. An obsolescent law, an aloof and indifferent bar—the one can amend the other—and itself, better than others can, and should take the lead. We are in process of bettering these things, but the process will not reach an end within our time. The lawyers of the next generation—or more—must carry it on; and they should be fit for the task. To that end their education should have some conscious relation, some intended adaptation. To be more precise, they should be educated not merely in the technique and the learning of the profession, with horizons bound by the walls of the counsel chamber and the court-room, but as broad-minded and high-minded citizens. In this republic, of public service both in the orderly and unemotional processes of government, and in the more strenuous and impassioned reforma-

tion of the law, in the future as in the past, there will be no surcease.

But is this anything more than a counsel of perfection? More than a fine ideal? An ideal it doubtless is. But certainly the educators of ardent and impressionable youth should never forget Carl Schurz's noble saying: "Ideals are like stars; we cannot, indeed, touch them with our hands; but they will guide us to a safe and sure haven." And they are like the torch in the hand of the Grecian runner, still handed on to the next and still held high in advance.

What then is feasible to realize this aspiration? Or to recur to our earlier question—Can we teach our students of law anything expressly to fit them for public service? If so, what shall it be?

These questions at once bring up the distinction between ethical and mental preparation for public service—the distinction implied when we say the coming lawyer in public life should be trained to be both a high-minded and a broad-minded citizen. It does not seem to me that beyond the fundamentals of professional ethics, much can be directly imparted in the way of moral instruction. You cannot teach patriotism or a high sense of honor, or any other public virtue directly. They are acquired by absorption, not by class-room drill. But much of ethical value can be taught indirectly, out of the records of high and noble service in office and out of office. Such examples teach morality as well as philosophy; and herein is one important use of legal history and biography. Somers, resisting the pressure of king and court to convict the seven bishops, Romilly and Brougham and Macauley and Field in their great efforts to reform and codify the law —these are but a few of the many instances —whereof time would fail to tell all—of devotion to high ideals of public duty within and without the lines of professional labor. No youth fit by nature to become a public servant or to help mould public thought can fail to be fired by their contemplation.

When we come to the problem of giving instruction of an intellectual type, other than the narrowly or technically professional, which is the usual curriculm of the law school, we see at once that we have to deal with three classes of students who cannot be treated alike in this respect: the office student, the law school pupil who has not taken the general college course, and the law school pupil who has taken it.

Formerly, when law schools were few, and modern mechanism and methods had not ruined the law office as a place to study law, many, perhaps a majority of students in offices were college graduates; indeed, they felt that after their collegiate training it was the less necessary to undergo the class-room drill of the law school. But at present probably a large majority of the college graduates who study law do so in a law school; while most students in law offices are in remote or small country towns and their general education has not gone beyond the high school. We may, therefore, reduce the three classes to two: those who have had a collegiate education and those who have not.

Now no one doubts that there have been many brilliant and eminent lawyers who attained high public rank without a college education; but the argument, buttressed with the names of Lincoln and other famous men, that one may as well not go there, is a näive *non sequitur* which we need not stop to confute. Certainly those who have had that advantage and who are better able to judge than those who have not, agree on its great value both for its general or cultural uses and for the broader outlook and readier facility in professional work which it gives. But we must face facts; and one unescapable fact is that a collegiate degree cannot now, and probably cannot for many years, if it ever can, be set up in this country as the one narrow gate to the bar; for that notion is contrary to the spirit of our people.

What, then, are these additional studies, outside of the regular course of the law schools, or what we may call for brevity, the extra-professional studies, that are desirable for the student to take? This is not the occasion for laying down a curriculum of such studies, and least of all should that be done by one whose chief activity in education has been the self-education of practice at the bar. But a few suggestions may be ventured.

Foremost, perhaps, is international law. It is a historical study of deep interest as showing the growth of civilization, and the reflex action of commerce and industry, that is, of life, on law. In that light it measures the increasing control by the people, who carry on commerce and industry, of their rulers, who, by their armies and navies, make war, and by their treaties, make peace, and by both make international law. It is, therefore, both a humane study, in the university sense of the *literae humaniores*, and a humanitarian study as exhibiting the amelioration of war. It will not do to say, in view of Europe's ruined cities and the waste of waters where sank the Lusitania, that there is no such thing in time of war as international law. Breaches of law, however many and flagrant, do not prove there is no law, until they attain the point of real anarchy. Even in the face of such horrors, the voice of law is not silent, though drowned and ineffectual in the din; and it will be the louder and more authoritative when peace ensues.

But there is a more practical reason for knowledge of international law by the coming generation of lawyers, which has been well expressed by Senator Root. "The increase," he says, "of popular control over national conduct, which marks the political development of our time, makes it constantly more important that the great body of the people in each country should have a just conception of their international rights and duties. * * * Of course, it cannot be expected that the whole body of any people will study international law; but a sufficient number can readily become sufficiently familiar with it to lead and form public opinion in every community in our country upon all important international questions as they arise."

Need I add that of this sufficient number, lawyers, who are the natural leaders of opinion on whatever touches their sphere, should form a large part? And certainly, if any studies are to be required for entrance to the bar besides those immediately pertinent to ordinary practice, this should be one wherever it is not already pursued.

Although the thought is apart from my main theme, I may pause a moment to suggest that even to the lawyer primarily as such, and not as a citizen, international law is of increasing practical importance. The ease and speed of communication and of transportation have become so great that questions of international law, private and public, and of comparative law, are constantly arising in commercial centers and those subjects for their professional value merit the attention of the ambitious student.

Mention has already been made of the value of biography as an inspiring influence; and to that should be added history and particularly legal history. For history is not only, as Freeman said, past politics; it is past art, past science, past literature, past law. And by history of law I do not mean only the development of a given doctrine or rule of law,—a matter of technical learning to be extracted from the statutes and reports. I mean those general surveys of the growth of the law or of large branches of it, which put the student *en rapport* with the progress of civilization in its jural aspect. Such, for instance, as Reeve's History of English Law; Spence's Equitable Jurisdiction of Chancery, Holmes' Common Law, Maine's Ancient Law, Maitland's works on early English Law, the Legal Historical Series, now in course of publication, the Essays in Anglo-American Law, and some of Bryce's admirable studies in comparative law and in the constitutional

history of England and the United States. One can attain only a journeyman's knowledge of his profession who does not at least seek sufficiently near to the sources to form some acquaintance with its progress from an early state. And I may add that where the case-method of study prevails, as it does so generally now, such comprehensive surveys, at least of some branches of the law, may be a useful counterbalance to the risk of failing to see the forest for the trees.

Economics, civics or the science of government, and other branches of sociology and political philosophy, the lawyer who would be prepared to take a part as citizen or officer in public affairs should know something of. Yet how often do men who succeed at the bar display ignorance and indifference as to them, and by their crude proposals flout the lessons of experience! The rising threat of socialism, the pressing questions of social reform, the violent conflicts of labor and capital—all these and others quite as insistently demand that the young lawyer, to play his part, must have some knowledge, some guiding principles of action, with which to meet them.

Some of our law schools cover portions of the foregoing suggestions in their entrance examinations, some offer international law and some branches of legal history as required or optional topics in their third year, and more extensive studies of the same general character in post-graduate courses. And, of course, any such extra-professional studies cannot be required alike of the two classes, the college graduates and the non-graduates. For the former have already had in most colleges giving a four years' liberal arts course, some of these studies or others of similar scope and cultural value. On the other hand, many office students and law school graduates come to the bar well equipped with knowledge of technical law but based on a very meager general education. Both they and sometimes the public will suffer for that lack. To adapt such requirements, then, to the needs and prior preparation of both classes, courses in the schools could be so arranged as to attain a minimum amount of instruction for all, elective as to the collegian, required as to others. And if by reason of his previous studies the college graduate is able to pursue broader or collateral courses of reading that will only be the just reward of his superior preparation. And as for those who enter the bar not by way of the law school, the bar examiners should raise their standards at least to an irreducible minimum of the subjects that we have been considering.

The present three years' course of many law schools is already well filled, not to say crowded, with strictly professional studies. Where, it will be asked, is the student to find the time to pursue any of these studies? For several years the conviction has been gaining ground that the teaching of pleading and practice in the school is inefficient and unsatisfactory, and that the problem must be met by confining the school studies to substantive law (at any rate, not going beyond teaching there the fundamentals of adjective law) and that one year in a law office should be required before entrance to the bar, as the means of acquiring a real knowledge of pleading and practice. This is the goal sought and in time to be attained. When reached, time enough for the other studies here advocated will be released, which is now spent and largely wasted, on the unreal study of practice.

The education of the lawyer—how important it is for himself and for his fellow-citizens! His standards of conduct cannot be too high, his field of learning too broad for the work he has to do. He cannot, no one in this age can, say with Bacon, in Bacon's sense, that he takes all knowledge to be his province. But he can say that into no province of knowledge he may not need to make excursions. To the ideal lawyer, we may apply Terence's words that nothing in human nature and human affairs but is akin to him. For he embodies to us the idea of law, which is the universal order of

civil society, and touches all interests. Alike in private affairs and in public life he seeks to restore that order when violated, to strengthen it when enfeebled, to adjust and rectify it amid novelties. He is a great conservative force of society, distant alike from the iconoclast and the reactionary. He is a great constructive force of society, for he builds where others destroy and brings order where they had left confusion. His education should fit him for all the varied functions of his career, and make him not only an advocate and a counselor, but a wise and instructed citizen, well equipped for his duties to the commonwealth alike in private and in public life.

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CORPORATION—PAYING DIVIDENDS OUT OF CAPITAL.

CARLISLE v. OTTLEY.

Supreme Court of Georgia. Aug. 11, 1915.

85 S. E. 1010.

(Syllabus by the Court.)

Where a solvent industrial corporation, which is engaged in the conduct of its business as a going concern, annually declares dividends through a number of years, and these dividends are paid out of the capital assets of the corporation, and the shareholders receive them in good faith and without notice that they are not paid from the net profits of the corporation, and afterwards the corporation is adjudicated a bankrupt, an action by the trustees in bankruptcy will not lie against the shareholders to recover the amount of the dividends so received by them.

J. K. Ottley, T. D. Meador, and R. H. Drake, as trustees in bankruptcy of the Spalding Cotton Mills, a corporation bankrupt, instituted suit in the Superior Court of Fulton county against J. A. McCrary, Mrs. C. B. Sasser, and J. A. Sasser, residents of Fulton county, and a large number of other persons residing beyond the limits of Fulton county, including E. F. Carlisle, of Spalding county. Carlisle filed a separate demurrer, which was overruled as to each and every ground therein taken; and he excepted to this judgment. The defendants were alleged to have been stockholders in the Spalding Cotton Mills, and as such to have received separate dividends on their respective shares of stock for the years 1901 to 1909, inclusive. The suit was to recover the dividends thus paid, with interest. Carlisle was alleged to have had two shares of stock, and the total amount of dividends alleged to have been paid him was $166. The petition further alleged the following, in substance: The defendants constitute all of the stockholders, except such as are deceased without administration on their estates, whose heirs at law are unknown to petitioner, leaving no property, and such other stockholders as are so absolutely insolvent that a judgment against them would be of no value. At various times during the operation of the Spalding Cotton Mills as a going business concern, the corporation paid to its stockholders the dividends before mentioned, which "were entirely unearned." At the time each of the dividends were paid, the corporation had earned no profits or surplus out of which dividends could lawfully be paid; and payment of such dividends "impaired the capital assets of the corporation," and constituted an unlawful appropriation of the capital assets. Under the circumstances named, the stockholders were not authorized to retain the dividends so paid to them; and petitioners, as trustees in bankruptcy, are entitled, under the general principles of law, to recover the same. The question of the liability of each defendant rests upon the same state of facts and the same questions of law, and therefore one suit can equitably and speedily adjust all questions arising relative to any of the defendants. Unless the court takes jurisdiction and in one suit adjusts all of the matters, petitioners will be forced to file separate suits against each defendant, which will needlessly involve a multiplicity of suits. The total amount of unearned dividends when recovered will be insufficient to pay the indebtedness of the bankrupt.

ATKINSON, J. 1. As a ground of demurrer, it was urged that the petition did not purport to allege a joint liability against the defendants, but set forth distinct claims against the defendants separately; and consequently that there was a misjoinder of parties. It was also alleged in the demurrer that the petition sought to marshal the assets of several estates, thereby dealing with several things of distinct natures, and against several persons who have no joint interest in the subject-matter of the suit; and consequently that the petition was multifarious. The petition does not attempt to marshal the assets of any estate. Its object was merely to recover the

amount of dividends alleged to have been unlawfully paid out by the corporation, some of which went into the hands of representatives of deceased stockholders. The plaintiffs are trustees in bankruptcy of the corporation which paid out the dividends, who, by virtue of their office, represent creditors of the bankrupt corporation, and as such they occupy the status of creditors relatively to the right to sue.

[1] It is declared in the Civil Code, § 2251:

"In all suits against the members of a private association, joint-stock company, or the members of existing or dissolved corporations, to recover a debt due by the association, company, or corporation, of which they are or have been members, or for the appropriation of money or funds in their hands to the payment of such debt, the plaintiff or complainant in such suit may institute the same, and proceed to judgment therein against all or any one or more of the members of such association, company, or corporation, or any other person liable, and recover of the member or members sued the amount of unpaid stock in his hands, or other indebtedness of each member or members: Provided, the same does not exceed the amount of the plaintiff's debt against such association, company, or corporation; and if it exceed such debt, then so much only as will be sufficient to satisfy such debt."

It was alleged in the petition that the total amount of unearned dividends, when recovered, will be insufficient to pay the indebtedness of the bankrupt. Under such allegations, the liability of the defendants, if any, under the statute quoted above, would be the full amount of their debt to the corporation. The statute contemplates avoidance of multiplicity of actions, and is sufficient authority for joining all the defendants in this action. See Spratling v. Westbrook, 140 Ga. 625, 79 S. E. 536; Allen v. Grant, 122 Ga. 552, 558, 50 S. E. 494; Moore v. Ripley, 106 Ga. 556, 561, 32 S. E. 647; Boyd v. Robinson, 104 Ga. 793, 803, 31 S. E. 29.

[2] 2. Another ground of demurrer urged that the petition should be dismissed, because it appears from the allegations thereof that the defendant resided in a different county from that in which the action was instituted, and, therefore, the court was without jurisdiction. As indicated above, the statute authorized the institution of one suit against all of the defendants. The suit was in equity, and the venue may be laid in the county of the residence of any defendant against whom substantial relief is prayed. Civil Code, 1910, § 6540. As some of the defendants against whom substantial relief is prayed resided in Fulton county, jurisdiction as to them would also draw to it the defendant who resided in Spalding county.

[3] 3. It is alleged that the dividends were paid out of the capital stock of the corporation, there being no net profits from which to pay them. The plaintiffs contend that the capital assets of the corporation constituted a trust fund which the directors were prohibited, under penalty prescribed in the Penal Code, § 740, from applying to payment of dividends; and, being such, they could be followed for the benefit of creditors into the hands of the shareholders who received the dividends. It was not alleged that at the time the dividends were received the corporation was insolvent or was not a going concern, or that the stockholders received the dividends with notice that they were not being paid from net profits of the corporation. Nor was the good faith of the shareholders in receiving the certificates otherwise attacked. The demurrer complained of the absence of allegations of this character; and, as the demurrer was overruled, it must be assumed, in reviewing the judgment on demurrer, that the corporation was solvent and a going concern at the time of the payment of the dividends, and that the shareholders received the same in good faith and without notice that they were not being paid from net profits of the corporation. Viewing the petition in this light, we do not think it sets forth a cause of action. On its facts, as indicated above, the case is quite similar to that of McDonald v. Williams, 174 U. S. 397, 19 Sup. Ct. 743, 43 L. Ed. 1022. It is unnecessary to repeat the discussion contained in the opinion in that case. It will suffice to say that the effort there was to recover dividends paid out by a corporation, not shown to be insolvent, to its shareholders who were not affected with notice that the dividends were being paid from the capital assets, and that there was a statute which prohibited the corporation from paying dividends out of capital assets. The ruling in that case has been followed in Great Western Mining Co. v. Harris, 128 Fed. 321, 63 C. C. A. 51; Lawrence v. Greenup, 97 Fed. 906, 38 C. C. A. 546; and New Hampshire Savings Bank v. Richey, 121 Fed. 956, 58 C. C. A. 294. See, also, 5 Thomp. Corp. (2d Ed.) § 5363, p. 161; 2 Cook on Corporations (6th Ed.) § 548, p. 1497. The case differs from that of Crawford v. Roney, 130 Ga. 515, 61 S. E. 117, as will sufficiently appear from the remarks of Lumpkin, J., on page 519 of 130 Ga., 61 S. E. 117, in distinguishing the case from that of McDonald v. Williams, supra.

[4] 4. The demurrer also raised a question as to the right of the plaintiffs to recover dividends which were paid out prior to the time the corporations became indebted to the creditors for whom the trustees in bankruptcy were suing, and set up that the plaintiffs could not recover dividends which had been received four years before the institution of the suit. In view of the ruling in the preceding division, to the effect that the plaintiffs did not set forth a cause of action, it is unnecessary to deal with the questions thus raised, and they will not be decided.

Judgment reversed. All the Justices concur.

NOTE.—*Payment of Dividends Out of Capital Received in Good Faith While Corporation is Going Concern.*—The instant case goes upon the theory, that the assets of a solvent corporation are not a trust fund in favor of creditors, according to general principles of law, and, at the same time, it requires that a stockholder knowing or having good reason to believe that dividends are paid out of capital must refund them if called on by creditors. If this be true, then statute may make the declaration of dividends such an act *ultra vires* a corporation as to call for repayment by recipients, whether they honestly or fraudulently received same.

McDonald v. Williams, 174 U. S. 397, 43 L. ed. 1022, is a ruling to the effect that the statute regarding national banks does not explicitly say, that dividends paid out of capital by a solvent concern shall involve any one but the directors who declare the dividend.

Great Western Mining Co. v. Harris, 128 Fed. 321, 63 C. C. A. 546, and the other Circuit Court of Appeals cases cited, discuss the terms of no statute whatever as bearing on the question and so also does the instant case. The allusion which it makes to Crawford v. Roney, 130 Ga. 515, 61 S. E. 117, is not very full. That case says: "The case of McDonald v. Williams, 174 U. S. 397, seems not to apply the trust fund doctrine as far as many other cases," and then it argues that it does not apply to a case of dividends being credited on a stock subscription, where at least the subscriber was both a director and a stockholder. This goes to show that statute as to such dividends may place stockholders and directors in the same boat, and it might well do so on the ground that at bottom money has been received by others, whether in good faith or bad faith, which *ex aequo et bono* ought to be returned to the fund from which it was wrongfully taken.

When we consider the painstaking care with which statutes prescribe, that no corporation shall transact business until it first qualifies with regard to the requisite capital, it would seem that wrongful depletion of capital by returning a part thereof to stockholders, ought to count for more than involving a penalty upon directors of the corporation.

Instead of statutes being looked at narrowly to see if they explicitly require a return from a stockholder of what has been unlawfully paid him, they ought to be looked at in their general aspect of guarding against intrusion upon what the law has set apart as wholly inviolable except as ventures according to corporate power may make inroads thereon. If stockholders invest their money in corporate stock, they invest in a concern whose compliance with law they in a measure guaranty, as the intimations in the cases about good faith imply. But, if they select their own officers, they ought also to be held to guaranty their fidelity to organizing statutes bringing the corporation into existence. Our contention, in a word, is that statutes ought to have a more drastic interpretation than they receive. When they make it a penal offense for a director to pay dividends out of capital, the conclusion ought to go further than that statute exhausts itself in punishing director delinquents. They should be held to mean that this criminal offense carries no benefit whatever to a good faith recipient of benefits therefrom. It is a confusion of speech to hark back to principles about trust fund and its non-existence so far as a solvent corporation is concerned. It should be held, that the original capital remains unless it has been depleted by legitimate losses. A principle of this kind would cover the case of wrongful payment of dividends or payment of extravagant salaries, or any other moneys wrongly diverted. What really is the use of the principle *ultra vires* if it cannot cover illegal expenditures?

C.

JETSAM AND FLOTSAM.

THE EARLIEST ANGLO-SAXON INTERPRETERS OF THE LAWS—BRITAIN'S FAMOUS DRUIDS.

England has made an effort, of late, to revive the old Druids, with which her folk-lore is filled. There is scarcely a masque, or outdoor fete held in which the minstrels of the town do not take part, attired as were these bards of the long ago, and usually rendering musical numbers that smack of the old Druid chants. With the circlets in their hair and the cords 'round the waist, and the long, shaggy hair falling on the loose robes, the Druids at once inspire a respect in all and an attention that few other performers attract.

Students of the old Druid legends tell us of how we find in Caesar the first and, at the same time, the most circumstantial account, of the Druids to be met with in the classical writers. In the digression on the manner and customs of Gaul and Germany, which occupies a portion of the Sixth Book of his Gallic War, he tells us that all men of any rank and dignity in Gaul were included among either the Druids or the nobles. The former were the religious guides of the people, as well as the chief expounders of, and guardians of, the law.

On those who refused to submit to their decisions, they had the power of inflicting severe penalties,—of which excommunication from society was the most dreaded. As they were not a hereditary caste and enjoyed exemption from service in the field, as well as from payment of taxes, admission to the order was eagerly sought after by the youths of Gaul.

The course of training to which a novice had to submit was protracted, extending sometimes over twenty years. All instruction was communicated orally, but for certain purposes they had a written language, in which they used the Greek characters.

The president of the order, whose office was elective and who enjoyed the dignity for life, had supreme authority among them. They taught that the soul was immortal.

Astrology, geography, physical science and natural theology were their favorite studies. Britain was the headquarters of Druidism; but once every year a general assembly of the order was held within the territories of the Carnutes of Gaul.

"These folk, in extreme cases, offered human sacrifices, usually criminals. Their chief deity was identified by Caesar as the Mercury of the Romans." Pliny tells us that the Gallic Druids held the mistletoe in the highest veneration, while groves of oaks were their favorite retreats. Whatever grew on the tree was thought to be a gift from heaven; but especially if it was the mistletoe. When thus found, the latter was cut with a golden knife, by a priest clad in a white robe, two white bulls being sacrificed on the spot!

Out among the oaks the Druid choirs sang their curious chants and here, too, they sat in judgment on the laws—the very earliest form of a supreme court, so to speak, in the history of the Anglo-Saxons.

FELIX J. KOCH.

Cincinnati, Ohio.

ITEMS OF PROFESSIONAL INTEREST.

UNIFORMITY IN WORKMEN'S COMPENSATION LAWS.

Probably no subject of law shows such wide variation in the different states as do the various Workmen's Compensation Laws. This great lack of uniformity has opened the eyes of business men to the great need of a uniform law on this subject. The matter is particularly interesting to the casualty insurance agents whose president recently gave expression to the serious results which have followed the different kinds of Workmen's Compensation Laws in the various states.

We quote the following from the editorial page of our esteemed contemporary in the insurance field, The Rough Notes:

"The rapidly developing problems resulting from the lack of uniformity in the more than thirty state workmen's compensation laws was briefly but emphatically called to the attention of the members of the National Association of Casualty and Surety Agents by the newly elected president, George D. Webb, in his speech of acceptance, this being, in Mr. Webb's opinion, one of the most important and likewise one of the most difficult problems which the association has to face in the immediate present and future. An enormous amount of office clerical work is already involved, particularly in covering an employer, for example, whose operations extend over several or all of the states in which compensation laws are in force. It is a question of only a short time before all states will have in force statutes of this character, and it seems now practically an impossibility to guide the remaining states yet to be thus equipped to the enactment of measures which will be any more uniform with those of each other or that of any state now in force than those now existing, but it may be safely predicted that there will be practically as many new samples of compensation laws to deal with as there are states to enact them. Viewing the relationship which insurance bears to furnishing indemnity for workmen's compensation, the business in this line has literally grown with the rapidity of wildfire. The growth of fire insurance, life insurance, accident and all the older branches has been slow and tedious like a spark traveling along a cotton string, but, to persist in the figure, the growth of compensation insurance more resembles an explosion. With the enactment of each new state measure there comes, immediately with the date of enforcement thereof, the demand for the whole volume of indemnity, which is automatically dumped on the market and forced upon the underwriters in a number of instances by practically compulsory provisions, as far as the assured is concerned.

"Literally, it would seem the fire has blazed beyond control almost as soon as lighted. It has been impossible to guide these many state measures into any semblance of uniformity, and the chief hope that harmony may, some time in the future, be accomplished lies in the unbearable conditions themselves. The rapid

approach of such an unendurable situation was clearly pointed out by Mr. Webb. Although the task of securing uniformity seems almost a hopeless one, yet his association can undertake it with a certain confidence that they will be working toward that desired end whenever they agitate persistently and systematically for it, by keeping constantly before the public mind that, not only is lack of uniformity a great burden upon the insurance companies, but that it more directly affects the public in increasing the cost to the purchaser of workmen's compensation insurance, and also complicates the process of settlement of claims, because of which friction and uncertainty the public may suffer frequent losses in the course of such settlements."

Lawyers who have labored so tirelessly in behalf of uniform laws will regard this expression of the practical need of uniformity as a wholesome reognition of their labors. For this reason the work of Commissioners on Uniform State Laws assumes greater importance and the bar should rally strongly around the work of the Commission and encourage their legislature to give its work prompt recognition. We have no doubt that the draft of a uniform Workmen's Compensation Law already proposed by the Commission could be revised, if necessary, to harmonize the conflicting provisions of the laws of the different states.

A. H. ROBBINS.

BOOKS RECEIVED.

Digest of Insurance Cases.—Embracing all decisions in any manner affecting insurance companies or their contracts, upon whatever plan or for whatever purpose their business may be conducted, covering all United States Courts, namely, the United States Supreme Court, the United States Circuit Court of Appeal, and United States Circuit and District Courts—all courts of last resort and other Appellate Courts of the various states and territories and District of Columbia—all the highest judicial tribunials of all other English speaking countries and all inferior courts within the foregoing jurisdictions whose decisions are reported—also reference to all annotations and leading articles on insurance in all law journals published in the English language. Vol. XXVII, for the year ending October 31, 1914. By Guilford A. Deitch of the Indianapolis Bar, assisted by Frank G. West, of the Indianapolis Bar. Indianapolis. The Rough Notes Company, publishers, 1914. Price, $3.50. Review will follow.

HUMOR OF THE LAW

Judge (of divorce court): "Aren't you attached to your husband?"

Plaintiff: "Certainly. I came here to be detached."—*Boston Transcript.*

The late Judge Gary, of Baltimore, who, in his younger days, was a member of the State Legislature, was noted for his quickness at repartee. On one occasion he had introduced a bill that proved very obnoxious to several members of the opposing faction. After adjourning, one of the discontented came rushing up to him in a great state of excitement.

"Look here, Gary," he exclaimed, "I'd rather blow my brains out than advocate such a measure!"

"My dear sir," replied Gary, with a twinkle in his eye, "you flatter yourself on your marksman ship."—Case and Comment.

The secretary of the bar association was very busy and rather cross. The telephone rang.

"Well, what is it?" he snapped.

"Is that the city gas works?" said a woman's soft voice.

"No, madame," roaded the secretary, "this is the San Francisco Bar Association."

"Ah," she answered in the sweetest of tones, "I didn't miss it so far, after all, did I?"

"Your husband is willing to allow you the custody of the automobile, the poodle, and the rubber plant, with liberal alimony, while he takes the children and the graphophone."

"Stop the divorce," sobbed the wife. "I'll never get another husband like that."—Louisville Courier-Journal.

Colonel Mason, who lives in Washington County, Maine, had a great aptitude for serving as a juror. When thus serving, he was very anxious that his opinion should be largely consulted in making up a verdict. Some years ago, while upon a case, after many hours trying to agree, but failing, he marshaled the delinquent jury from the room to their seats in the court, where the impatient crowd awaited the result of the trial. "Have you agreed upon a verdict?" inquired the clerk. The colonel arose, turning a withering glance upon his brother jurors, and exclaimed: "May it please the court, we have not; I have done the best I could do, but here are eleven of the most contrary devils I ever had any dealings with."—Case and Comment.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

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1. **Acknowledgment**—Deeds.—In a suit to recover compensation for procuring options enabling defendants to acquire land, a deed tendered defendants held admissible, though not bearing the seal of the notary, where the defense was denial of contract.—Shepherd v. Taylor, N. C., 85 S. E. 397.

2. **Adverse Possession**—Public Land.—Limitations do not apply to settle title to unlocated school lands as against a county holding and disposing of such lands granted it by the state in trust for purposes of education.—Colorado County v. Travis County, Tex., 176 S. W. 845.

3. **Aliens**—Minor Child.—Minor child of Chinese merchant held lawfully within the United States; he not being afflicted with any moral or physical infirmities justifying deportation, under Act March 26, 1910.—Lew Ling Chong v. United States, U. S. C. C. A., 222 Fed. 195.

4. **Animals**—Bailment.—A contract of bailment of mules held not to make the bailee an insurer, but to obligate him merely to use ordinary diligence in safeguarding the mules.—Sanchez v. Blumberg, Tex., 176 S. W. 904.

5. **Arson**—Corpus Delicti.—The corpus delicti in arson consists, not alone of a building burned, but also of its having been willfully fired, and a burning by accident and natural causes must be sufficiently excluded to constitute a sufficient proof of the crime.—Daniels v. State, Ala., 68 So. 499.

6. **Assault and Battery**—Police Officer.—A police officer is not liable for injuries inflicted by him in use of reasonably necessary force to preserve peace or to overcome resistance to his authority, but if he uses unnecessary violence he becomes a trespasser and liable as such.—Kouns v. Townsend, Ky., 176 S. W. 989.

7. **Bankruptcy**—Apportionment of Expense.—Under a stipulation between petitioning and intervening creditors and the bankrupt for apportionment of expenses, including allowances to accountants, the bankrupt held liable for its part of the allowances to the accountants.—King Hardware Co. v. J. G. Christopher Co., U. S. C. C. A., 222 Fed. 224.

8.——Approval by Referee.—Persons furnishing money paid trustee in bankruptcy under option to purchase bankrupt's property, held not entitled to recover it, though proposed change in the option agreement was never approved by the referee or creditors.—In re International Mineral Co., U. S. D. C., 222 Fed. 415.

9.——Discharge.—The rights of a creditor against third persons liable jointly with the bankrupt or secondarily for him are not impaired by the adjudication or discharge.—Polk v. Stephens, Ark., 176 S. W. 689.

10.——Equity.—A trustee in bankruptcy held not entitled to aid of a court of equity to reach trust property; the testamentary trustee having an absolute discretion, and any interest of the bankrupt as heir having already passed to the trustee in bankruptcy by the adjudication.—Brown v. Lumbert, Mass., 108 N. E. 1079.

11.——Preference.—Bankr. Act U. S. §§ 60a, 60b, as amended by Act June 25, 1910, § 11, relating to preferential transfers, held to have no application to owners of property who have no claim against a bankrupt contractor, on account of possible liens by a preferred sub-contractor.—Jump v. Bernier, Mass., 108 N. E. 1027.

12.——Subrogation.—Under arrangement between employer and party upon whom he gave employes orders payable in trade, such party held not subrogated to the laborers' right to priority upon the employer's bankruptcy.—J. C. Stewart & Co. v. McLeod, U. S. C. C. A., 222 Fed. 253.

13.——Summary Proceeding.—Money paid by a bankrupt partnership on one of its debts after filing of petition held recoverable in summary proceeding without plenary suit.—In re R. & W. Skirt Co., U. S. C. C. A., 222 Fed. 256.

14.——Sureties.—Where a case is tried on appeal and the principal on the appeal bond prevents judgment from being obtained against him by pleading a discharge in bankruptcy, the sureties are released from the bond.—James v. Harry Kitzinger & Co., Ala., 68 So. 582.

15. **Banks and Banking**—Check by Partner.—Drawing by individual partner of firm check on general deposit made by him in name of firm, and presentment to bank for payment, held not to create the relation of debtor and creditor between himself and the bank.—Tallapoosa County Bank v. Salmon, Ala., 68 So. 542.

16. **Brokers**—Action.—Plaintiff real estate broker could sue in his own name for commissions against an owner for whom he had negotiated a sale, although another broker associated with him had released to the owner his claim.—Gentry v. United Cities Realty Corporation, Mo., 176 S. W. 715.

17.——Bringing Parties Together.—Where broker brought parties together, held, that it

was not necessary, to entitle him to commissions, that he should take part in making the final contract of exchange of lands.—Brilliant v. Samelas, Mass., 108 N. E. 1047.

18. **Carriers of Goods**—Consignment.—A carrier receiving goods of seller consigned to his own order, with directions to notify the buyer, may justify a delivery merely because the price was payable on delivery.—Lake Shore & M. S. Ry. Co. v. W. H. McIntyre Co., Ind., 108 N. E. 978.

19.——Unlawful Concession.—A carrier knowingly grants an unlawful concession, contrary to Hepburn Act, June 29, 1906, § 1, if it or its agents willfully or intentionally remained in ignorance of the facts rendering the rate unlawful.—United States v. Erie R. Co., U. S. D. C., 222 Fed. 444.

20. **Carriers of Live Stock**—Evidence.—In action against carrier of live stock, delivery in such condition that cattle were worth as much as their value declared by shipper in contract limiting carrier's liability, although damaged and worth less than original value, held no bar to recovery of usual damages not in excess of amount per head limited by contract.—Cincinnati, N. O. & T. P. Ry. Co. v. Smith & Johnston, Ky., 176 S. W. 1013.

21. **Carriers of Passengers** — Employes. — Where an employer carried its employes by train from where they were employed to its plant, charging them nothing, an employe so carried was not a "passenger," the relation of employer and employe still continuing.—St. Bernard Cypress Co. v. Johnson, U. S. C. C. A., 222 Fed. 246.

22. **Chattel Mortgages**—Estoppel.—One who exchanged new pianos for old ones covered by a chattel mortgage which permitted the exchange on condition that the new ones be subject to the mortgage is estopped to deny the superior rights of the prior mortgage.—Williams v. W. W. Kimball Co., Mo., 176 S. W. 478.

23.——Trover.—Mortgagee under a chattel mortgage, which provided that the mortgagor's right to property should be forfeited if he sold the property, can bring trover against the purchaser before the law day of the mortgage.—Lowery v. Haley, Ala., 68 So. 539.

24. **Contracts**—Acceptance.—Where a mistake in the price is made in a written bid following an oral estimate and bid, the person to whom the bid is offered cannot create a contract by acceptance, if he knows of the mistake and the bidder's ignorance thereof.—Tyra v. Cheney, Minn., 152 N. W. 835.

25.——Competition.—An agreement that one of the parties should purchase property at a judicial sale and sell it to the other, which was not intended to stifle competition or prevent the property bringing a fair price, does not invalidate the sale.—Evans v. Carter, Tex., 176 S. W. 749.

26.——Implied Promise.—An owner's knowledge of and acquiescence in the fact that extras are being put in the building by the contractor implies a promise that the owner will pay the reasonable value thereof.—Sterling Engineering & Construction Co. v. Berg, Wis., 152 N. W. 851.

27. **Copyrights**—Comic Opera.—Authors of a comic opera, who take out a copyright on a song with orchestral accompaniment, dedicate to the public the right to sing the words to the music, accompanied by an orchestra.—Herbert v. Shanley Co., U. S. D. C., 222 Fed. 344.

28. **Corporations**—Bonus.—The promoters of a corporation cannot procure the payment of a bonus to themselves as commissions and charge it to the corporation when formed.—Commonwealth Bonding & Casualty Ins. Co. v. Thurman, Tex., 176 S. W. 762.

29.——Fiduciary Relation.—Directors of a corporation stand in a fiduciary relation to it, and their purchase of corporate property may be set aside at the option of the corporation.—Canadian Country Club v. Johnson, Tex., 176 S. W. 835.

30.——Sale of Stock.—Plaintiffs having purchased stock from defendant's corporation under an agreement that, if at any time they wished to get their money back, they could do so, could not under such agreement recover the money paid for stock after the lapse of five months.—Starkweather v. Gleason, Mass., 108 N. E. 1084.

31.——Trust Fund.—Profits derived by directors from the issuance of unsubscribed-for stock to themselves at a price greatly below the selling value, of which other stockholders had no notice, held to constitute a trust fund belonging to stockholders of record at the time of sale of such stock.—Hechelman v. Geyer, Pa., 94 Atl. 188.

32. **Criminal Law** — Accomplice. — Person agreeing with accused and deceased to say nothing about fatal blow, then believing that deceased was not fatally injured, held not an accomplice, and his testimony did not require corroboration.—Blalock v. State, Tex., 176 S. W. 725.

33. **Death**—Dependents.—It is not essential that decedent should have been under a legal obligation to contribute to the support of his next of kin to warrant a recovery for their benefit, but recovery must be based on loss of support which they might reasonably expect would continue.—Pennsylvania Co. v. Reesor, Ind., 108 N. E. 983.

34.——Election.—In an action under the federal Employers' Liability Act, amended by Act April 5, 1910, for death of plaintiff's husband, refusal to require plaintiff to elect between her cause of action for benefit of the estate and that for herself and next of kin was proper.—St. Louis, I. M. & S. Ry. Co. v. Rodgers, Ark., 176 S. W. 696.

35. **Deeds**—Construction.—A deed to E and her heirs begotten by her present husband, held to convey fee simple title to her.—Cox v. Newby, S. C., 85 S. E. 369.

36. **Depositaries**—Estoppel.—Where the buyer of a stock of goods in bulk paid over the price to a depositary, with directions to pay merchandise creditors and the surplus to the seller, the depositary is bound to recognize the seller's assignment of the surplus.—Rabalsky v. Levenson, Mass., 108 N. E. 1050.

37. **Divorce**—Decree.—Where land was inherited by a wife from her father, and she pro-

cured a divorce, judgment awarding her only the life use of such land was improper.—Davis v. Davis, Ky., 176 S. W. 955.

38. **Dower**—Common-Law.—A widow has no common-law dower, where deceased's only interest in land was vested remainder held in trust.—Whitman v. Huefner, Mass., 108 N. E. 1054.

39. **Easements**—Adverse Possession. — Defendant, who had no other outlet from his land and who used passway adversely, continuously, and without interference by plaintiff or his vendors for more than 15 years, held to have acquired a right by prescription.—Hampton v. Fuson, Ky., 176 S. W. 972.

40. **Eminent Domain**—Damages.—The measure of damages for taking land for a new railroad right-of-way is the difference between its value with a railroad on the original right-of-way and its value with a railroad on the new location.—Louisville & N. R. Co. v. Wilson, Ky., 176 S. W. 980.

41.——Damages.—On condemnation of mill property for railroad right-of-way, jury, in determining its depreciation, held not limited to consideration of property in its present state, but entitled to consider the uses to which it might be adapted in the future.—Raleigh C. & S. Ry. v. Mecklenburg Mfg. Co., N. C., 85 S. E. 390.

42. **Equity**—Remedy.—A bill in equity, seeking equitable relief on the theory that defendant had stolen chattels of plaintiff, and had part of them, and had the money for the balance which they had sold, held to show inadequacy of legal remedy and to state a cause of action for equitable relief.—Homrich v. Robinson, Mass., 108 N. E. 1082.

43. **Estoppel**—Attorney in Fact.—Where W, though having title under a deed, executed a deed to the land as attorney in fact for the former owner, plaintiff, claiming under a quitclaim deed from W's heirs, was estopped from asserting title as against one claiming under the deed executed by W as attorney in fact.—North Star Land Co. v. Taylor, Minn., 152 N. W. 837.

44.——Fraud.—To estop one by deed it must be proved that there was a consideration paid the grantor, or that he was guilty of fraud or gross negligence, and that the party relying on the estoppel did not know the facts.—Ford v. Warner, Tex., 176 S. W. 885.

45.——Misrepresentations.—In action to enjoin foreclosure of a mortgage, defendant mortgagees held not estopped by misrepresentations to plaintiff's predecessor in title, by the real, but concealed, owner, in his individual capacity, that he had not incumbered the property, when reconveying to avoid foreclosure of a prior mortgage; he being, as a trustee, one of the mortgagees.—Hanson v. Griswold, Mass., 108 N. E. 1035.

46. **Extradition** — Fugitive. — Requisition for the delivery of a fugitive from justice held not rendered void because agent of demanding state delayed nearly four months in presenting it to governor of Indiana, nor because the prosecuting witness employed and paid agent's attorneys.—Worth v. Wheatley, Ind., 108 N. E. 958.

47. **Fish**—Property in.—The general property in all fish, so far as not excepted by Code, § 6902, is in the state, which may regulate their capture and disposition; but the owner of land on which there is a stream has a special property in the fish therein and may take them for his own use.—Yolanda Coal & Coke Co. v. Pierce, Ala., 68 So. 563.

48.——Statutory Construction.—Under Rev. Laws, c. 91, §§ 113, 114, the board of health need only name definitely a date from which the prohibition of taking shellfish from contaminated waters shall begin, but need not limit the period.—Commonwealth v. Feeney, Mass., 108 N. E. 1068.

49. **Fraudulent Conveyances** — Fraud Presumed.—A voluntary transfer of property by one in debt is presumptively fraudulent as to existing creditors, and, if the debtor is insolvent or the gift will necessarily hinder, delay, or defraud his existing creditors, it is conclusively fraudulent.—Fluke v. Sharum, Ark., 176 S. W. 684.

50. **Gaming**—Dealing in Futures.—Dealing in futures when both parties intend that there shall be no deliveries but only a settlement of differences betwen the contract and the market price are wagering or gambling contracts and illegal and void by the common law.—Carpenter v. Beal-McDonnell & Co., U. S. D. C., 222 Fed. 453.

51.——Public House.—The words "public house," within Code 1907, § 6991, prohibiting gambling, must be a public house of the character of those described by the words "tavern" and "inn."—Whatley v. State, Ala., 68 So. 491.

52. **Guaranty**—Construction.—A guaranty executed by stockholders of a company to a bank held limited to indebtedness arising out of direct transactions between the company and bank, and not to cover the company's notes purchased from the payees by the bank.—Bank of Murphy v. Murphy Furniture Mfg. Co., N. C., 85 S. E. 381.

53. **Homestead**—Occupancy.—Where a divorced woman occupies as a home premises set apart to her as a homestead, and then married one who intended to make the homestead the common homestead, actual occupancy held not essential.—Blackwell v. Vaughn, Tex., 176 S. W. 912.

54. **Homicide** — Resisting Officer.—One unlawfully sought to be arrested by an officer may not kill such officer where the attempt creates no reasonable belief that the arrest will do great bodily harm, although such an arrest may be resisted with reasonably necessary force.—Ezzel v. State, Ala., 68 So. 578.

55.——Self-Defense.—One who commits acts likely to produce a combat, or in any way invites such combat, and during it slays his adversary, cannot invoke the law of self-defense.—Langham v. State, Ala., 68 So. 504.

56. **Indictment and Information**—Severance.—Where defendant, jointly indicted with others for larceny, obtained a severance, the state was not bound to show that the others were concerned in committing the crime.—White v. State, Ala., 68 So. 521.

57.——Time.—No indictment will be held insufficient for failing to state the time when the offense was committed, where time is not of the essence of the offense, or for stating it imperfectly.—State v. Gremillion, La., 68 So. 615.

58. **Injunction**—Waiver.—The waiver of a provision that the conditions of the policy shall not be waived except by an agreement indorsed on the policy may be implied by law from the conduct of an agent acting within the apparent scope of his authority.—Southern States Fire Ins. Co. v. Vann, Fla., 68 So. 647.

59. **Insane Persons**—Pleadings.—No judgment that a person is insane and pronouncing interdiction of such person can be sustained where no answer was filed on her behalf and no counsel represented her.—Gore v. Barrow, La., 68 So. 625.

60. **Insurance** — Change of Beneficiary. — Wife, named as beneficiary in policy reserving right to change beneficiary, held, by joining in

assignment to secure debt, not a surety for the husband, and no consideration to her was necessary.—Mutual Ben. Life Ins. Co. v. Swett, U. S. C. C. A., 222 Fed. 200.

61.——Change of Policy.—Father and mother of minor, as guardians by nature, held not entitled to consent to change of policy on his life to a paid up policy.—Burke v. Prudential Ins. Co. of America, Mass., 108 N. E. 1069.

62. **Internal Revenue** — Definitions.—"Engaged in business," "carrying on business," and "doing business," within Act Aug. 5, 1909, § 38, defined.—Industrial Trust Co. v. Walsh, U. S. D. C., 222 Fed. 437.

63.——Net Income.—A net increase in the book value of securities held by a banking corporation, as shown by an adjustment entered on its books, held not to constitute "net income" for the year when the adjustment was made, subject to excise tax under Act Aug. 5, 1909, § 38.—Industrial Trust Co. v. Walsh, U. S. D. C., 222 Fed. 437.

64. **Judicial Sales**—Caveat Emptor.—A purchaser who has instructed the sheriff to sell the property subject to certain mortgage notes, takes subject to such notes as corrected by a public act duly recorded prior to the sale providing for interest semi-annually.—Kyle v. Bayou Sale Planting & Drainage Co., La., 68 So. 640.

65. **Landlord and Tenant**—Counterclaim.—In an action to recover $750 which the lessee had agreed to pay at expiration of a lease for expense of landlord in converting the premises into a suitable storeroom, it was no defense that the lessor had not so converted the premises.—Nydegger v. Gitt, Md., 94 Atl. 157.

66.——Invited Guest.—Where a tenant's invited guest was injured from falling down a stairway, which was not within the landlord's control and which he had not contracted to keep safe, held, that the landlord was not liable.—Mackey v. Lonergan, Mass., 108 N. E. 1062.

67. **Larceny**—Property Unknown.—A steer was the subject of larceny, though it had strayed from the premises of its owner, and even though the name of its owner was unknown.—McKinney v. State, Ala., 68 So. 518.

68.——Theft Defined.—A "theft" is the fraudulent taking of property with intent to deprive the owner of the value of it, and with intent to appropriate the property to one's own use and benefit.—Kellar v. State, Tex., 176 S. W. 723.

69. **Life Estates**—Dividends.—Where testamentary trustees held corporate stock to pay the income to beneficiaries for life, with remainder to others, cash dividends pass as income, while stock dividends pass as capital.—Talbot v. Milliken, Mass., 108 N. E. 1060.

70.——Improvements.—Life tenant, with remainder to his children, voluntarily expending money in its improvement, held not entitled to reimbursement for the expenditure out of the principal, which must be invested in real estate.—Bigstaff's Trustee v. Bigstaff, Ky., 176 S. W. 1003.

71. **Limitation of Actions**—Tolling Statute.—Part payment by bankrupt, one of three joint makers of note, after his discharge, held not to toll the statute of limitations as against his comakers.—Polk v. Stephens, Ark., 176 S. W. 689.

72. **Logs and Logging**—Safe Place to Work.—An employer must furnish his employe a reasonably safe place, material, and appliances, though the work is performed on the premises of another and for the latter's benefit.—Ligon's Adm'r v. Evansville Rys. Co., Ky., 176 S. W. 968.

73. **Marriage**—Validity.—The statement of a man at the time of his marriage that he would not live with the woman, did not render the marriage void.—Wimbrough v. Wimbrough, Md., 94 Atl. 168.

74. **Master and Servant**—Anticipating Injury.—To render employer liable for natural and probable consequence, held that person to be harmed or the form of the injury need not have been foreseen.—Thompson v. United Laboratories Co., Mass., 108 N. E. 1042.

75.——Appliances.—A staging in position furnished by the employer is an appliance for work, for defects in which the master is responsible.—Blohm v. Boston Elevated Ry. Co., Mass., 108 N. E. 1040.

76.——Contributory Negligence.—A teamster, injured when thrown off a board he was using as a seat, cannot recover; the master not having furnished him with the seat.—Bradley v. Carolina Coal & Ice Co., N. C., 85 S. E. 388.

77.——Evidence.—Where neither plaintiff nor defendant, in a death action, claimed any right or immunity under the federal Employers' Liability Act, evidence tending to bring the case under the statute should be excluded.—Koennecke v. Seaboard Air Line Ry., S. C., 85 S. E. 374.

78. **Mines and Minerals**—Forfeiture.—Where plaintiffs sued to prevent defendant from interfering with their possession of oil land, they are not entitled to show that defendant, who had a lease from the owner, had forfeited his rights; that being a matter concerning the owner alone.—Moore v. Decker, Tex., 176 S. W. 816.

79.——Owner and Lessee.—The owner of the mine, and not the lessee who operates it, is liable for injuries caused by the subsidence of the surface, if he takes coal out and fails to leave supports for the roof of the mine.—Jackson Hill Coal & Coke Co. v. Bales, Ind., 108 N. E. 962.

80. **Monopolies**—Restraint of Trade.—The union in one corporation of a number of others, each of which had been engaged in the manufacture of patented non-competing machines, but which were used successively in a manufacturing business, is not a combination in restraint of trade, in violation of Sherman Anti-Trust Act, July 2, 1890, c. 647, § 1.—United States v. United Shoe Machinery Co., of New Jersey, U. S. D. C., 222 Fed. 349.

81. **Mortgages**—Assumption. — A purchaser who dispenses with the production of a mortgage certificate and assumes payment of mortgage notes, assumes payment of such notes as corrected in an act recorded prior to the date of purchase.—Kyle v. Bayou Sale Planting & Drainage Co., La., 68 So. 640.

82.——Validity.—Delivery of mortgage to one of joint mortgagees, attorney for two of the others, and fellow-trustee, under a will, of the remaining mortgagee, held valid.—Hanson v. Griswold, Mass., 108 N. E. 1035.

83. **Municipal Corporations**—Cancellation of Contract.—Contractors with city held not overreached, and not entitled to cancellation of contract, because of their reliance on engineer's statement that change in location of conduit would involve no additional expense.—Winston v. City of Pittsfield, Mass., 108 N. E. 1038.

84.——Illegal Contract.—That taxpayers had used some part of a sewerage system in connection with their delay with knowledge of the facts held not to estop them from maintaining a general taxpayers' action to enforce the right and duty of the city to refuse to pay public money upon its illegal contract.—Sales v. City of Hartford, Wis., 152 N. W. 853.

85.——Injunction.—Residents, taxpayers and owners of realty in a municipality, may sue to enjoin the mayor and common council from incurring unlawful obligations which would increase the burden of taxation and impose special assessments on their property.—Weber v. Probey, Md., 94 Atl. 162.

86.——Public Work.—A provision of the home rule charter of the city of Dawson held not to forbid the changing or alteration of plans of a valid written contract for the construction of a public work.—Carson v. City of Dawson, Minn., 152 N. W. 842.

87.——Statutory Construction.—Acts of General Assembly of 1915, purporting to legalize and ratify all proceedings of the city of Kinston relating to the issue of certain public improvement bonds, cured any defect under the charter in such proceedings, though it inadvertently referred to the bonds as having been already delivered.—City of Kinston v. Security Trust Co., N. C., 85 S. E. 399.

88. **Nuisance**—Bawdyhouse.—Under Vernon's Sayles' Ann. Civ. St. 1914, art. 4689, a citizen to

maintain an action to enjoin use of a place for keeping of a bawdyhouse, need not be injured in his property rights.—Campbell v. Peacock, Tex., 176 S. W. 774.

89. **Parties**—Order Nunc pro Tunc.—An order of consolidation as to parties may be corrected by adding additional parties by an order nunc pro tunc.—Sterling Engineer & Construction Co. v. Berg, Wis., 152 N. W. 851.

90. **Principal and Agent**—Action by Agent.—Refusal of principal to give agent statement of amount of such agent's equity in a note given by purchaser to cover price of stock sold by such agent, whereby agent lost opportunity to sell such equity, held to give him no right of action against principal.—Mutual Loan & Investment Co. v. Matthews, Tex., 176 S. W. 924.

91.——Burden of Proof.—In assumpsit to recover unpaid balance due for building materials, on ground that one of defendants was agent of other defendants, the lower court's determination that plaintiff had offered no evidence tending to prove agency held correct.—Heise & Bruns Mill & Lumber Co. v. Goldman, Md., 94 Atl. 159.

92.——Net Profits.—Under an agent's contract for salary and a percentage on net profits, term "net profits" held the difference between defendant's assets on the dates they were to be computed, deducting depreciation, maintenance, bad debts, etc., from the receipts.—Stein v. Strathmore Worsted Mills, Mass., 108 N. E. 1629.

93.——Scope of Agency.—One who was authorized by the owner of horses to accompany them during a shipment to see that none of them got down is not authorized, as a matter of law, to execute a contract of shipment limiting the carrier's liability.—Southern Pac. Co. v. W. T. Meadors & Co., Tex., 176 S. W. 882.

94. **Public Lands**—Cancellation of Patent.—On the cancellation as invalid of patents to public lands, the claimant under such patents cannot recover from the United States the cost of improvements made on the land or taxes paid thereon under the laws of the state.—Bradford v. United States, U. S. C. C. A., 222 Fed. 258.

95. **Railroads**—Last Clear Chance.—The negligence of one killed on railroad track would not necessarily defeat a recovery, since, if the engineer of the approaching train realized that decedent was unconscious of his danger, and failed to exercise ordinary care to avoid injury, recovery could be had on doctrine of last clear chance.—Pennsylvania Co. v. Reesor, Ind., 108 N. E. 983.

96.——Safety Appliance Act.—The federal Safety Appliance Act, requiring power brakes on trains, does not apply to switching operations in railroad yards and terminals.—Worley v. Southern Ry. Co., N. C., 85 S. E. 397.

97. **Receiving Stolen Goods**—Description.—An indictment charging defendant with receiving stolen goods must describe the goods as definitely as would be required in an indictment for larceny.—Duncan v. Commonwealth, Ky., 176 S. W. 984.

98. **Removal of Causes**—Leave to Discontinue.—Plaintiff will not be granted leave to discontinue an action after removal to the federal court, where he has instituted another action in the state court for the same cause, in which he claimed less damages to prevent its removal to the federal court.—Palmer v. Delaware, L. & W. R. Co., U. S. D. C., 222 Fed. 461.

99. **Sales**—Delivery.—The seller's delivery of goods to a carrier after acceptance of the buyer's order and before receipt of his countermand was a delivery to the buyer.—Bloom v. Edward Miller & Co., Ark., 176 S. W. 673.

100. **Searches and Seizures**—Blind Tiger.—A provision of Act No. 146 of 1914, authorizing a search on affidavit of any place suspected of being a blind tiger, is not violative of the constitutional guaranty against unreasonable search and seizure and the issuance of a warrant without probable cause.—State v. Doremus, La., 68 So. 605.

101. **Shipping** — Liability. — Owners of a steamer held not liable for the death of a keeper, placed on board by the marshal while the vessel was in custody, by falling though the opening leading to the stokehold in the dark.—Kjaer & Isdahl v. Etier, U. S. C. C. A., 222 Fed. 243.

102. **Street Railroads**—Proximate Cause.—Code 1907, § 1269, requiring street railroads to repair tracks and streets, gives a right of action to one injured as proximate result of failure to keep street so that the ordinary travel of the locality may pass with reasonable safety.—Birmingham Ry., Light & Power Co. v. Donaldson, Ala., 68 So. 596.

103. **Taxation**—Domicil.—Where an income is taxed the recipient must be domiciled in the state, or the property or business out of which it issues must be in the state.—State v. Wisconsin Tax Commission, Wis., 152 N. W. 848.

104.——Interest in Land.—A conveyance of gas and oil and gas in place in the ground conveys an interest in realty which is subject to taxation in the hands of the grantee, separate from the value of the land in which they are found.—Texas Co. v. Daugherty, Tex., 176 S. W. 717.

105. **Telegraphs and Telephones**—Delivery of Message.—A telegraph company, learning that, because of conditions brought about by no fault on its part, it is unable to deliver a message, must notify the sender that delivery cannot be made.—Jones v. Western Union Telegraph Co., S. C., 85 S. E. 370.

106. **Trover and Conversion**—Elements of.—Transfer by defendant of notes, together with stock, purchased therewith and pledged by buyer as security, to liquidate an individual indebtedness of defendant, held a conversion of the 15 per cent interest in such notes of plaintiff, who had negotiated the sale.—Mutual Loan & Investment Co. v. Matthews, Tex., 176 S. W. 924.

107. **Trusts**—Competency to Contract.—Wife, though incompetent to contract when agreement to devise property was made by her and her husband, held to take conveyance from husband impressed with a trust and bound to convey or devise it in accordance with his contract.—Skinner v. Rasche, Ky., 176 S. W. 942.

108. **Use and Occupation**—License.—Agreement authorizing use of roof of building for advertising purposes held to give a mere license, and not to create the relation of landlord and tenant, and hence an action for use and occupation would not lie.—Jones v. Donnelly, Mass., 108 N. E. 1062.

109. **Water and Water Courses**—Pollution.—Loss of the use of water of a stream by pollution justifies damages for depreciation in the rental value of the property affected and for the inconvenience and annoyance caused by the loss.—Yolanda Coal & Coke Co. v. Pierce, Ala., 68 So. 563.

110. **Wills**—Construction.—Under will giving fund, one-half to granddaughter, the testator's only heir, and the other half to "my lawful heirs," such one-half held to pass to those who would have been his heirs, had he left no issue.—In re Irish's Estate, Vt., 94 Atl. 173.

111.——Construction.—Where separate paragraphs of the will devised lands to each of testators' children and the "heirs of his body," the words quoted took their technical meaning; and hence a conveyance from one son having children vested the grantee with a fee simple title.—Lane v. Dillon, S. C., 85 S. E. 369.

112.——Execution.—Where the signature to a will is genuine and two witnesses signed in his presence, a prima facie case of due execution is made, though the witnesses failed to notice whether the will was signed.—Thompson v. Karme, Ill., 108 N. E. 1001.

113.—Rescission of Consent.—Where a husband, without making a fair disclosure of his property, procures his wife's consent in writing to his will and codicils, the wife is not precluded from rescinding her consent after his death.—State v. Probate Court of Hennepin County, Minn., 152 N. W. 845.

114. **Witnesses**—Self-Incrimination. — A witness in a civil case, to be relieved from answering a question, on the ground that it will incriminate her, must swear that it will do so.—Campbell v. Peacock, Tex., 176 S. W. 774.